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Author(s): J. E. A. Crake

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EARLY CHRISTIANS AND ROMAN LAW

J. E. A. CRAKE

TERTULLIAN IN HIS *Apology* wrote that Tiberius referred to the senate the news from Palestine concerning the divinity of Christ. The senate rejected this claim, but Tiberius held to his opinion and voiced a threat against accusers of Christians.¹ The story is essentially a comment on deification by decree of the senate. It is repeated in Jerome's *Chronicle*, but with the added information that the senate passed a decree to banish Christians from the city and that Tiberius issued an edict threatening death to their accusers.² This combination of legal inconsistency would have inspired a couple of pages of sarcasm from Tertullian. Fortunately Jerome cites his source; it is Tertullian's *Apology*.

Few would take seriously even Tertullian's version of these events. But there is a great tendency to follow Jerome in reading more into the evidence than is really there. I should like to re-examine the legal position of Christians in the period from Nero to Trajan, with particular attention to the limitations of the evidence.

At present it seems to be widely accepted that there was never in the first two centuries any special legislation making Christianity a criminal offence, though that view does still put in an appearance.³ It also seems now to be clear that the normal procedure in dealing with Christians was by exercise of the power of *coercitio* inherent in any magistrate's *imperium*.⁴ This did not require any statutory offence to be proved, but

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¹Tert. *Apol.* 5.1-2. On the historicity of the event see E. Ciaceri, *Tiberio* (Milan 1934) 319-326. The account has recently been defended by M. Sordi, *RAL* ser. 8, 12 (1957) 58-93, but not apparently with much support; cf. note by H. H. Schmitt in E. Kornemann, *Tiberius* (Stuttgart 1960) 275. Her argument rests mainly on the uncertain interpretation of late evidence of doubtful quality.

²*Eusebii Pamphili Chronici Canones*, ed. J. K. Fotheringham (London 1923) 259. Eusebius (*HE* 2.2) quotes Tertullian without embellishment, and so is probably not responsible for this addition.

³See especially H. Last, *RLAC* 2, s.v. "Christenverfolgung II (juristisch)" 1208 ff.; J. Moreau, *La persécution du Christianisme dans l'empire romain* (Paris 1956) 66-70; J. Beaujeu, *L'incendie de Rome en 64 et les chrétiens* (Brussels 1960) 31-38; K. H. Schwarte, *Historia* 12 (1963) 185-208.

⁴H. Last, *RLAC* 2.1221-1225; A. N. Sherwin-White, *Roman Society and Roman Law in the New Testament* (Oxford 1963) 1-23. On judgment *extra ordinem* see *Digest* 48.19.13; A. H. M. Jones, *Studies in Roman Law and Government* (Oxford 1960) 53-65. On the ability of the Roman law to deal with cases not covered by statute see Ulpian on *Stellionatus* (*Digest* 47.20.3).

was rather judgment *extra ordinem*. It was this process which St. Paul refused to face when he appealed to Caesar. The charge then had to be defined in some way, which apparently caused the procurator Festus some embarrassment.⁵ It is also illustrated by Pliny in Bithynia, who found a way of convicting Christians brought before him of *contumacia*; failure to obey orders naturally invited the exercise of *coercitio*.⁶

The problem may seem to be simply shifted from discriminatory legislation to discriminatory administration of justice. There is no question that it was this latter form of discrimination that aroused the criticism of Christian apologists in the second century.⁷ There is not much doubt that we have an example of it from Pliny. The usual inference is that it began with Nero. But this at once raises problems that are endlessly debated.⁸ I suggest that the inference is not necessary.

There is not much difficulty about the position at the beginning of the reign of Nero. The career of Paul of Tarsus recounted in the Acts of the Apostles provides a number of examples of how a Christian leader could find himself before a Roman court, none of them involving the term Christian.⁹ The final episode of his appeal to Caesar shows Festus at a loss to describe the charge. When Paul arrived in Rome, the Jewish community admitted that they had heard reports of this new teaching

⁵Acts 25.9–27; Eusebius *HE* 2.21–22; cf. Sherwin-White, *op. cit.* (note 4) 51.

⁶Plin. *Ep.* 10.96. On *contumacia* see *Digest* 48.19.5; cf. Tert. *ad Nat.* 1.17–18; *Apol.* 27.2.

⁷Athenagoras, *Supplicatio pro Christianis* 6–11; Justin, *Apol.* 3–4; Tert. *ad Nat.* 1.2–3; *Apol.* 2. Melito (Eusebius *HE* 4.26) mentioned new decrees of which informers took advantage. These could not be decrees directed specifically at Christians, or he would be in the position of protesting the decrees on the ground that they were achieving their object. Hadrian's rescript to Minucius Fundanus (Justin *Apol.* 68; Eusebius *HE* 4.8–9) is essentially a reaffirmation of the position of Trajan. Tertullian's expressions (*Apol.* 4.4) *non licet esse vos*, or (*ad Nat.* 1.3) *crimen nominis* must be set beside *Apol.* 35.8: hostility is from mob, not senate, army, or palace; the mob is not a source of law. Eusebius (*HE* 4.17) records the protest of a certain Lucius over the punishment of a Christian, not convicted of any crime, under Antoninus Pius: this would be ridiculous if Christianity itself were a crime. That Christians were brought under one or other of the statutory crimes seems belied by Tertullian, *Apol.* 44; cf. *Scap.* 4. They continued to be dealt with *extra ordinem*. The procedure is further illustrated by the letter, *Martyrdom of Polycarp*.

⁸No attempt is made here to include a full bibliography. E. Gibbon (*The Decline and Fall of the Roman Empire*, ch. 16) seems to have started modern discussion. His suggestion, that it was Jews rather than Christians that Nero attacked, has produced more confusion than clarification. See for a recent summary J. Vogt, *RLAC* 2, s.v. "Christenverfolgung I (historisch)" 1159 ff.; J. Beaujeu, *op. cit.* (note 3); R. Hanslik, *WS* 76 (1963) 92–108.

⁹Acts 16.19–40; 17.5–9; 18.12–15; 21.27 ff.; cf. Phil. 1.13; 2 Tim. 3.11; 4.6–21. Similarly at Ephesus the silversmith Demetrius was told to bring specific charges if he had any complaint (Acts 19.23–41). For this period see Sherwin-White, *op. cit.* (note 4).

and had gathered it aroused opposition.¹⁰ Their attitude is singularly vague in a city where there was a substantial Christian group. We may reasonably assume that the term Christian, which meant so little to the Jewish group, would mean nothing to the average Roman.

The evidence for the relations between Christian and governmental authority from Nero to Trajan may be listed thus: (i) Contemporary Christian writings, mostly contained in the New Testament. (ii) Later Christian tradition. (iii) Non-Christian accounts of Domitian's suspicions and attacks. (iv) Pliny's correspondence with Trajan. (v) Suetonius' references to Christians. (vi) Tacitus on the fire in Rome under Nero. It is not irrelevant to call attention to the lack of reference to Christians in writers such as Juvenal and Martial.¹¹

(i) For the period which follows that covered by the clear historical narrative of the Acts of the Apostles there is not much that can be gleaned from contemporary Christian writings. Several passages in the gospel narratives have been cited as containing references to Christian persecution.¹² These are in the form of prophecy, and can mostly be interpreted as deriving from Jewish apocalyptic writing and are not necessarily *post eventum*. All can be readily understood within the framework of the undoubted hostility of Jewish authority in Jerusalem. Nor do references in the non-Pauline epistles lend themselves as evidence for specific events. The First Epistle of Peter says that Christians should avoid being arrested for recognized crimes, but need not be ashamed of arrest for their Christian adherence. This is primarily an exhortation to moral uprightness, and certainly not an assertion that Christianity was a

¹⁰Acts 28.17–22. For the number of Christians see Rom. 16; Phil. 4.21–22. Suetonius' account of the expulsion of Jews for a riot *impulsore Chresto* may imply a dispute with followers of Christ at that time (Suet. *Claud.* 25.4; for the spelling cf. Tert. *Apol.* 3.5; *ad Nat.* 1.3; for the event Acts 18.1–2). Not much can be built on this confused reference when set beside Dio 60.6.6; see H. J. Leon, *The Jews of Ancient Rome* (Philadelphia 1960) 23–27.

¹¹Juv. *Sat.* 1.155–157 may be a reference to Nero's display after the fire of A.D. 64, but is not a reference to his victims. Similarly the *tunica molesta* of Juv. *Sat.* 8.235 and Mart. 10.25.5–6 is a reference to a practice in connection with burning at the stake, but not to any particular victims of this punishment, even if Tertullian does allude to it in connection with Christians (*Apol.* 50; *ad Mart.* 5). Seneca (*Ep.* 14.5) is concerned with punishment, not Christians. On the other hand there are specific references to Jews (Juv. *Sat.* 3.13–14; 14.96–104; Mart. 4.4.7; 7.30.5; 7.35.4; etc.).

¹²On Matt. 24.9–13, Mark 13.9–13, Luke 21.12–17, see C. H. Dodd, *JRS* 37 (1947) 47–54. Matt. 5.11 does not need the inspiration of later events. Mark 10.39 addressed to James and John must have been written when John was still flourishing, and thus is not a reflection of later events. Matt. 9.35–11.1, Luke 6.22 are both intelligible in terms of Christians within the Jewish community.

recognized crime in any court. The conditions in fact seem to be the same as those known from the adventures of St. Paul.¹³ We could add that Ignatius in the time of Trajan uses the same language, and is himself apparently an individual victim; his fellow Christians whether on his route or in Rome are not liable to be involved in his fate.¹⁴

It is very precarious to try to use the Apocalypse of John for historical evidence. Apart from the difficulty of dating the book, a difficulty that applies to some other writings of this period, the nature of the work itself is to conceal any obvious reference to contemporary history. The natural procedure is to use our knowledge of history to identify allusions in the book; it is almost impossible to reverse the process without arguing in a circle. It can, however, be readily seen that the book is as much concerned with the fate of Jews as of Christians. If a contemporary event is reflected, the destruction of Jerusalem in A.D. 70 would seem most probable.¹⁵ In any case it does remind us that at the time of writing Christians still thought of themselves as a part of Judaism.

(ii) Later Christian tradition about the period from Nero to Trajan is known mainly through Tertullian, who was the source of most later accounts.¹⁶ His account is that Christianity had its origin under Augustus, was taught clearly and openly under Tiberius, including the episode mentioned at the start of this paper, but under Nero was ruthlessly condemned; "you may judge the persecutor." One of his main points is clearly that only bad emperors persecuted the Christians. *Consulite commentarios vestros* (one wonders whom apart from Tacitus he had in mind), "you will find that Nero first raged with Caesarian sword against this sect just rising in Rome." He does not say that Nero tried to execute all the Christians he could find. In fact for Tertullian it was the execution

¹³1 Peter 1.6; 2.12-17; 3.13-17; 4.12-16 urge the Christians to obey the laws. Compare the similar exhortation of Rom. 13. 1-7; Tit. 3.1. 1 Clem. 5-6 probably alludes to Nero's persecution; it does not clearly imply any other occasion. Hebr. 13.3 simply places Christians as part of a long line of Jewish sufferings (cf. Hebr. 11).

¹⁴Ignatius was a "prisoner for the name" (*ad Eph.* 3; cf. Paul, Phil. 1.13). There was apparently no risk of guilt by association (*ad Eph.* 1; *ad Rom.* 10; cf. Euseb. *HE* 3.36). It is not, however, clear why Ignatius was being taken to Rome; *Dig.* 48.19.31 does not say that all condemned *ad bestias* were to be reserved for Rome. Moreau, *op. cit.* (note 3) 46, doubts the authenticity of the letters; there seems no good reason for this. If they were known to Irenaeus, he must also have known the covering letter of Polycarp, and Irenaeus knew Polycarp.

¹⁵The faithful are at least in part Jewish people (Apoc. 21). Repeated references to 42 months of trials do not fit any discernible period exactly, but certainly suggest a prolonged but measurable attack, such as a war. The Jewish revolt broke out into open war in A.D. 66, lasting about four years to the capture of Jerusalem in August 70. The beast could be any Roman emperor who compelled Caesar worship; cf. Epistle of Barnabas 16.4.

¹⁶See especially Tert. *ad Nat.* 1.7; *Apol.* 2-5; *Scorpiace* 15; cf. Lactantius, *De Mort. Pers.* 2; Euseb. *HE* 2.25; 4.26.

of the apostles Peter and Paul that placed Nero as an enemy of Christianity. This seems to be the one firm fact reflected in all the Christian writing.¹⁷ If we had no other information we might reasonably suppose that Paul had once more got into trouble for the usual reason, Jewish antagonism to his blasphemous teaching, and that this time the Roman authority supported the complaint of the Jewish leaders as Pontius Pilate had once done. Indeed the late Acts of Peter and Paul specifically links the Jews with the charge against Paul.

Vespasian, according to Tertullian, did not persecute the Christians. But Domitian tried to imitate Nero. Imitation is Tertullian's way of putting it; he does not say Domitian consciously revived a Neronian practice. In fact it was a rather poor imitation in the case of his attacks on Christians; exile rather than death seems to have been the penalty, and Domitian later tired even of this. It is when we examine the details that the elusive nature of Domitian's persecution of Christians becomes apparent. The most famous victim, in the Christian tradition, was the Apostle John; there was also Flavia Domitilla, niece of the consul Flavius Clemens; the grandsons of Judas were investigated but not convicted. To these must be added the "many others" exiled with Domitilla to Pontia, and the "many Christians who suffered martyrdom" as recorded by Bruttius quoted by Jerome.¹⁸

The martyrs of Bruttius conflict with, rather than support, the picture of Tertullian and Eusebius who speak only of exiles. Nor do the many others who accompanied Domitilla to her place of exile inspire confidence. The relations between Domitian and the Christians clearly rest on three instances. The investigation of the grandsons of Judas seems to belong to Domitian's concern with the *fiscus Iudaicus* rather than to the status of Christianity. In any case acquittal hardly builds up a persecution. John's sojourn on Patmos seems isolated from all other recorded anti-Christian activity, unless we adduce the Apocalypse for the trials of the

¹⁷*Institutum Neronianum* (Tert. *ad Nat.* 1.7) was of course not a law; see Moreau, *op. cit.* (note 3) 68–69. On Peter and Paul see 1 Clem. 5–6; Ignatius, *ad Eph.* 12; Tert. *De Praes. Her.* 36; Euseb. *HE* 2.25; 3.1; *Chronici Canones* p. 267. The deaths of Peter and Paul are related as quite independent of any general persecution in the Acts of Peter and Paul. A possible clue to the date of this document is to be found in the reference to the sinking of Puteoli about one fathom into the sea after Paul left, "where it is to this day." The sinking of this coast is of course a well-known fact; see most recently A. E. Gunther in *Ill. Lond. News* (Jan. 1964) 86–89.

¹⁸Tert. *Apol.* 5.4–7; Euseb. *HE* 3.13–20; *Chronici Canones* 272–274. John was later released (Euseb. *HE* 3.23.1–6), which is perhaps to be related to Dio's statement that Nerva forbade charges of *maiestas* or adopting Jewish ways (Dio. 68.1.2). It has been pointed out above that the Apocalypse cannot safely be used as evidence for Domitian. 1 Clem. 2–3 mentions recent troubles, nature unspecified; at any rate persecution was not the trouble in Corinth. For Domitian and the Jews see E. M. Smallwood *CP* 51 (1956) 1–13.

Asiatic churches. He was released under Nerva, but if as a result of the cessation of anti-Jewish measures, then we must suppose that he too was involved for Jewish rather than Christian reasons. The case of Domitilla must wait until the non-Christian evidence has been noted.

(iii) The non-Christian evidence for Domitian's persecution of Christians comes mainly from Suetonius and Cassius Dio.¹⁹ They mention his expulsion of philosophers and other such dangerous teachers from Rome. This might be connected with exile as applied to some Christians. There is also the case of the consul Flavius Clemens, executed for atheism along with others who had adopted Jewish ways; his wife Domitilla was exiled for the same cause to Pandateria.²⁰ It should be noted, first that nowhere does any non-Christian source mention Christians in connection with Domitian; yet Suetonius had thought them worth mentioning in the time of Nero. If Christians were involved in the expulsion of dangerous teachers, it was in the company of others who did not share their religion. Secondly, the one recorded execution, that of Flavius Clemens, goes quite unmentioned in the Christian tradition. No ancient author suggests that he was a Christian, although Eusebius had read about Domitilla in non-Christian sources (*HE* 3.18.4). Finally Domitilla herself is apparently claimed as Christian by Eusebius, but regarded as adopting Judaism by Cassius Dio. They also differ on her relationship to Clemens, and the island to which she was sent.

It cannot be said that there is a very clear picture of Domitian's attitude toward Christians.²¹ Christian writers have picked him out as hostile, but they seem a little uncertain why he merited this distinction.

¹⁹Suet. *Dom.* 10.3; 15.1; Gellius *NA.* 15.11.2–5; Dio 67.3; 67.14.1–3. On the relations of the Princeps with philosophers see Ch. Wirszubski, *Libertas as a Political Idea at Rome* (Cambridge 1950) 124–150.

²⁰Suet. *Dom.* 15.1; Dio. 67.14.1–3; cf. *ILS* 1839; 8306; *CIL* 6.948.

²¹On the extent of Domitian's persecution see J. Moreau, *op. cit.* (note 3) 36 ff.; K. H. Waters, *Phoenix* 18 (1964) 49–77. Domitian seems to have been concerned about the *fiscus Iudaicus* (Suet. *Dom.* 12.2; cf. Dio 66.7.2). This could very well have brought the status of Christians into question; cf. E. M. Smallwood *CP* 51 (1956) 1–13. Pliny's reference to persons who had abandoned Christianity twenty years before, i.e., under Domitian, is not evidence of any persecution unless we suppose that was the only reason a convert might lapse. If persecution were the reason, then the whole point of abandoning the Christian religion would have been that one did so publicly. This would make the charge and defence twenty years later rather foolish. On the relations between the Jews and Christians after the 1st century see Y. Baer in *Studies in History*, ed. A. Fuks and I. Halpern (Jerusalem 1961). Lucian, *De Morte Peregrini* 11–16 seems to introduce Jewish features in his account of Peregrinus' Christian activities; he was converted in Palestine (in the 2nd century), became leader of the synagogue, and was caught eating forbidden food. J. Vogt (*RLAC* 2.1167–1170) defends the historicity of Domitian's persecution. The evidence largely amounts to the Christian tradition of bad emperors as persecutors.

Non-Christian writers say nothing about Christians. What does emerge is Domitian's strict enforcement of the payment of the Jewish tax, and at the same time his attempt to suppress Jewish proselytizing. That Christians still thought of themselves as part of Judaism is clear from their own literature. But the public claim had certainly become less useful after A.D. 70, and no doubt they were more willing to stress the distinction. It is not surprising that people in a slightly ambiguous relation to Judaism should be in an embarrassing position between Domitian's two attitudes towards that religion. It is also not surprising if there was some confusion among our sources as to whether Judaism or Christianity was what was being investigated in a given case. John after all was a Jew. It certainly seems rash to suppose that amid this confusion Domitian consciously instigated attacks on Christians, or even that he could with confidence distinguish them from Jews.

(iv) Pliny's experiences with Christians have already been mentioned.²² He quite clearly had heard about them, as had the Jews in Rome fifty years earlier, and assumed they were a criminal organization. But he did not know what was the established way of dealing with them in court. He tells Trajan of the test he had improvised, with the prompting apparently of their accusers, which provided grounds for executing them for *contumacia*. But this was not satisfactory as a standard procedure; there were too many Christians. Pliny had not been present at any case involving Christians; this does not mean that there had been a steady stream of such cases since the days of Nero or at least Domitian. In fact the reply from Trajan, drafted no doubt by the imperial secretariat, displays an equal ignorance. No general rule can be laid down. The direct question of Pliny (are they to be punished for *nomen ipsum an crimina cohaerentia nomini?*) is left unanswered. As the imperial secretaries on other occasions showed themselves diligent in searching the files, it is perhaps a good assumption that they could not find anything to help Pliny. The rescript was surely never intended to be a guide for general practice, though that is what it apparently became.²³ By failing to

²²Plin. *Ep.* 10.96, 97; cf. Sherwin-White, *op. cit.* (note 4) 18, 67. Pliny's concern seems to have been, at least in part, the enforcement of laws about *collegia*; Plin. *Ep.* 10.93; cf. *Dig.* 47.22.4. They were not, however, prohibited *religionis causa* (*Dig.* 47.22.1). The Jews had enjoyed privileges in this connection (Joseph. *Ant.* 14.10.6–26; 16.6.1–7; 19.5.3). St. Paul in bringing tribute to the temple from his Christian congregations seems to have been asserting that all Christians enjoyed these Jewish privileges (Acts 21.26–29; 24.17–18). After the destruction of Jerusalem and the diversion of the temple tribute to the Roman *fiscus Iudaicus*, this claim was not likely to be advanced by the Christians, but might very well have been applied against them in some quarters.

²³Tert. *Apol.* 2.6–8; Euseb. *HE* 3.33; cf. Moreau, *op. cit.* (note 3) 44. On the role of the secretariat in answering inquiries see Plin. *Ep.* 10.66; A. N. Sherwin-White, *JRS* 52 (1962) 114–125.

answer Pliny's question, but telling him to carry on as he had been doing, the rescript could be taken to imply that *nomen ipsum* was the proper charge.

(v) Pliny in fact tells us little about previous conditions. He does inadvertently establish a precedent for the future. He also reveals the assumptions that by then attached to the name of Christian. Suetonius a little later shared these assumptions. He had little occasion to mention them, but did find that on one occasion Nero executed some Christians.²⁴ At least that was one good deed to put down to his credit. We cannot infer much from Suetonius, except that some persons executed by Nero had the name Christian applied to them in the record. The good deed is widely separated in Suetonius from Nero's crime of starting a fire in Rome, and no inferences can be drawn about a connection.

(vi) There remains Tacitus.²⁵ He shared the prejudices of his contemporary Pliny; the Christians were certainly a bad lot. But he did think it necessary to tell his readers who they were; he knew them as essentially a Jewish sect.²⁶ We are not far removed from the potential confusion of the days of Domitian, or indeed from the internal disputes of the Jews in the days of St. Paul. Tacitus' own view of Christians is fully consistent with a picture in which the term Christian was occasionally applied as part, but only part, of Jewish complaints; a term which Christians themselves used with pride as expressing that loyalty to their master which provoked the troubles with the Jews; but a term which conveyed to the Gentile only the most ill-defined suggestions of criminal tendencies, when it meant anything at all. The only inconsistency is that Nero picked these unknowns out for special attention, whether as incendiaries or for some other reason.

It has been observed that only Tacitus connects them with the fire. It has been suggested here that only Tacitus leads us to infer that Nero's victims were already known as a group called Christians. But are we

²⁴Suet. *Nero* 16.2; cf. 19.3. He mentions the fire in chapter 38. His references to Domitian's victims show no knowledge of a Christian connection (*Dom.* 10.3; 15.1). Nor does his account of the expulsion of Jews under Claudius show much understanding of Christians (*Claud.* 25.4), if a reference is intended at all.

²⁵Tac. *Ann.* 15.44. For the fire without reference to Christians see Suet. *Nero.* 38; Dio 62.16–18; *Chronici Canones* 265. Tertullian perhaps alludes to Tacitus (*Apol.* 37.3–8): "with a few torches in one night we could get revenge . . . you prefer to call us *hostes . . . generis humani*." He did not think highly of Tacitus' veracity (*ad Nat.* 1.11). The first document, apart from Tacitus, to relate Christians and fire seems to be Epistles of Paul and Seneca 12. This says Christians and Jews were blamed for burning the city. On the significance of the general silence on this subject see Moreau, *op. cit.* (note 3) 32–35.

²⁶Tac. *Ann.* 15.44.4; cf. H. Montefiore, *Historia* 11 (1962) 156–170.

again drawing an unwarranted inference? Nero to distract attention from himself supplied some accused persons, *quos vulgus Christianos appellabat*. Note the past tense and the source of the name. Tacitus is surely describing the situation at the time, not introducing those well-known trouble-makers of his own day. There was a mob who called these people Christians; a familiar scene if we recall all the other glimpses of Christians in trouble. We do not know, for Tacitus did not care, what was the original complaint which had brought the Christians under official notice.

Having explained how Nero diverted attention from himself to these people called Christians, Tacitus digresses to tell his readers who they were. This was not necessarily in his source for Nero's activities; it reflects rather the state of knowledge of Tacitus' own day. He then describes the penalties imposed. It would seem that in order not to give Nero credit for executing Christians, as Suetonius did, Tacitus has contrived to exaggerate his cruelty and perhaps the numbers involved. The picturesque penalties in fact resolve into the normal forms of capital punishment in the Roman empire, *bestiae*, *crux*, *crematio*.²⁷ The passage is hardly a precise description of a legal process.

The most probable explanation is that some Christians had been arrested, as a result of a riot or something of the sort, and Nero, anxious to put the blame for the fire somewhere, simply used these people already accused of causing trouble. It may have been, probably was, an informal connection by propaganda. But it suited Tacitus' purpose to let us infer that Nero had to search about for a suitable scapegoat.²⁸ He might have been surprised to have us also infer that the group discovered was already well-known.

The first reference to Christians as a recognizable group in Roman law was almost certainly Trajan's rescript to Pliny. Not only does that document itself fail to imply any pre-existing regulation, when there was a direct request for such information, but Tertullian with his legal training cited no other when he set out to review the history of the Christian's status. It was no doubt intended, as Tertullian thought, to restrain a hasty persecution. But, as he also saw, by failing to answer

²⁷Dig. 48.13.7; 48.19.8; 48.19.28; Mart. *De Spect.* 7; Ignatius *ad Rom.* 5; Hermas *Shepherd: Visions* 3.2.1; Tert. *ad Nat.* 1.18; cf. J. Beaujeu, *op. cit.* (note 3) 43-47.

²⁸On Tacitus' bias see F. W. Clayton, *CQ* 41 (1947) 81-85; but he assumes that Christianity was a crime. Moreau, *op. cit.* (note 3) 32 ff. and 72 ff. defends the correctness of Tacitus' account, and supposes the original charge to have been *superstitio nova* or the like. R. Syme, *Tacitus* (Oxford 1958) 2.532-533 says that Tacitus reproduces the confusion of the case, a false charge of incendiarism and genuine dislike of Christians; he himself shows that the dislike belonged to Tacitus. R. Hanslik, *WS* 76 (1963) 92-108 also assumes that Christians were not yet known as a group in A.D. 64, but revives the suggestion that Poppaea drew attention to this Jewish sect.

Pliny's question it could be taken to imply that the *nomen ipsum* was to be punished. It was this unhappy rescript that became the guide to any proconsul who shared the popular prejudice.

As most scholars recently have argued, there was no law, either existing section of criminal law, or special legislation directed against the Christians, under which Christians were prosecuted in the first two centuries. Nero's executions were ostensibly for incendiarism, and although his victims happened to be Christians, this was neither the reason for their deaths nor a precedent for any subsequent action. There is little evidence to support the notion of Domitian as a persecutor of Christians. Trajan, however, can be accused, as he was by Tertullian, of allowing a large group of his subjects to live under the cloud of unproven assumption of undefined guilt. The efforts of Hadrian and others to remedy this were at best half-hearted and of limited value. We do not hear the case that a government lawyer might present in answer to Tertullian, and there seems good reason to suppose that in fact there wasn't one. But there is little reason to suppose that there was any real cause for complaint before the second century.